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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA883

Taking and Importing Marine Mammals; U.S. Navy Training in the Southern California Range Complex

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Southern California (SOCAL) Range Complex, which extends south and southwest off the southern California coast.

DATES: This authorization is effective from February 8, 2012, through January 14, 2014.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to training, maintenance, and RDT&E in the SOCAL Range Complex became effective on January 14, 2009 (74 FR 3881, January 21, 2009), and remain in effect through January 14, 2014. An interim final rule was issued on February 7, 2011 (76 FR 6699, February 8, 2011) that included an amendment to allow for greater flexibility in the types and amounts of sound sources used by the Navy in SOCAL, the Hawaii Range Complex, and the Atlantic Fleet Active Sonar Training Study Area. NMFS issued the Navy a 1-year LOA on January 9, 2012, which is superseded by the 2-year LOA described in this notice. A modified final rule was issued on February 1, 2012 (77 FR 4917) that allows for multi-year LOAs. For detailed information on these documents, please refer to their respective Federal Register notices. The regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On August 30, 2011, NMFS received a request from the Navy for a renewal of an LOA issued on January 22, 2011, for the taking of marine mammals incidental to training and research

activities conducted within the SOCAL Range Complex under regulations issued on February 8, 2011 (76 FR 6699). The Navy has complied with the measures required in 50 CFR 216.274 and 216.275 and submitted the reports and other documentation required in the final rule and the 2011 LOA. Although the Navy exceeded the average annual estimated usage of two sonar systems, they remain well within the authorized 5-year source amounts and the authorized 5-year marine mammal takes.

Summary of Activity under the 2011 LOA

The Navy's classified 2010-2011 exercise report indicates that the Navy exceeded the average annual amount of two sonar systems during this monitoring period. However, the Navy remains well within their authorized 5-year source amounts. Sonar usage since January 22, 2009 (when the first LOA was issued) remains below 60 percent for all source types. Furthermore, the interim final rule for SOCAL (76 FR 6699, February 8, 2011) increased flexibility of sonar usage, provided it does not result in exceeding the incidental take analyzed and identified in the final rule. Based on the amount of sonar system use, the Navy's post-calculation estimates show that exposures for eight species may have exceeded the annual authorization in the 2011 LOA. However, potential exposures for all species since January 22, 2009 (when the first LOA was issued) are still less than 50 percent of the total 5-year authorization with only 2 years remaining under the current rule.

Planned Activities and Estimated Take for 2012 and 2013

In 2012 and 2013, the Navy expects to conduct the same type and amount of training each year that was identified in the 2011 LOA. Similarly, the Navy expects to remain within the annual estimates analyzed in the final rule.

Summary of Monitoring, Reporting, and Other Requirements under the 2011 LOA

Annual Exercise Reports

The Navy submitted their classified and unclassified 2011 exercise reports within the required timeframes and the unclassified report is posted on NMFS website:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed both reports and they contain the information required by the 2011 LOA. The reports indicate the amounts of different types of training that occurred from August 2, 2010, through August 1, 2011. The Navy conducted eleven Major Training Exercises (MTEs) – one Sustainment Exercise (SUSTEX), three Integrated Anti-Submarine Warfare Courses (IAC II), five Composite Training Exercises (C2X), and two Joint Task Force Exercises (JTFEX) – for a total of 134 days.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 428 marine mammal sightings totaling 5,848 animals.

2010-2011 Monitoring

The Navy conducted the monitoring required by the 2011 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and exercises by dedicated MMOs, passive acoustic monitoring utilizing high-frequency acoustic recording packages (HARPs), and marine mammal tagging and tracking. The Navy submitted their 2010-2011 Monitoring Report, which is posted on NMFS' website (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required timeframe. The Navy included a summary of their 2010-2011 monitoring effort and results (beginning on page 341 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report. Navy-funded marine mammal monitoring accomplishments within SOCAL for the past year includes the following:

Visual Surveys

The Navy completed a total of 1,001 hours of compliance funded visual surveys, exceeding their 2011 commitment by over 800 hours. During this time, there were 1,225 sightings of more than 100,594 marine mammals and 30.1 hours of detailed behavioral focal follows were recorded. Results from a single aerial survey in May 2011, show that the most frequent initial behavioral state observed for dolphins and whales was resting. Sperm whales were seen for the first time since SOCAL aerial monitoring began in fall 2008. There was a Major Training Exercise (MTE) the same day of the sighting, but it was 30-50 nautical miles away and on the other side of San Clemente Island.

Marine Mammal Observations

The Navy completed 83 hours of marine mammal observer (MMO) effort out of a planned 50-100 hours. During the four-day training event with MMOs, 24 sightings were made of about 599 marine mammals. The frequency of sightings was much higher compared to other Navy range complexes and the MMOs provided input on how to account for the faster rate of sightings unique to Southern California. Of the 428 Navy marine mammal sightings during MTEs, there were 110 sightings within 1,000 yards that qualified as mitigation events. There were no reports of marine mammals behaving in any unusual manner during these events.

Passive Acoustic Monitoring

Two high-frequency acoustic recording packages (HARP) remained deployed at two sites during the 2010-2011 monitoring period. The devices detected at least 16 different marine mammal species during the monitoring period, including six baleen whale species, California sea lions, and nine odontocete species.

Tagging

A total of 14 satellite tags were deployed on seven different species of marine mammals. Highlights from the tagging results continued to show long-term movement of three out of five Cuvier's beaked whales, one of the first indications that Southern California beaked whales may engage in non-local, out of area movement. Movements of a fin whale showed that individuals spent much of their time in deep, offshore waters.

SOCAL-10

SOCAL-10 was a scientific research project conducted around important biological areas near southern California in fall 2010. The project was an extension of previous behavioral

response studies in the Bahamas (2007-2008) and Mediterranean Sea (2009) and will be continued in southern California for a total of 5 years. The objective of the project is to provide a better understanding of marine mammal behavior, while providing direct scientific information for the Navy and regulatory agencies to estimate risk and minimize the effect of human sounds, particularly military sonar. Preliminary results based primarily on clearly observable behavior in the field and from initial data assessment indicate variable responses, depending on species, type of sound, and behavioral state during the experiments. Some observations in certain conditions suggest marine mammal avoidance responses, while in other cases animals seemed to not respond, at least overtly. Additional analysis and interpretation is underway of the nearly 400 hours of tag data from the project, as well as thousands of marine mammal observations, photographs, tissue samples, and acoustic measurements.

Conclusion

The Navy achieved all of its planned annual monitoring objectives during the 2010-2011 monitoring period. In conclusion, the Navy's implementation of the monitoring plan accomplished several goals, primarily through contributions to larger bodies of data intended to better characterize the abundance, distribution, life history, and behaviors of the species in the SOCAL Range Complex. The monitoring satisfied the objectives of the monitoring plan and contributed to a greater knowledge and understanding of the following: baseline marine mammal occurrence, density, and distribution of species within the SOCAL Range Complex, which will be added to a growing database of marine mammal aggregations around the world; vocalizations of different species, which contributes to the development of automated

classification software; movement patterns of individuals (both vertically in the water column on a daily basis, as well as horizontally over weeks and months); and observable behavioral patterns of marine mammals, both with and without exposure to Navy training activities.

Except as described below in the Adaptive Management section, NMFS concludes that the results of these monitoring efforts, when taken together with the findings presented in the 2010-2011 exercise report (see Annual Exercise Report section), do not warrant making changes to the current monitoring and mitigation requirements identified in the LOA. While the data collected by the Navy through monitoring and reporting builds on the existing body of information in a valuable way, none of the new data contradict, or amend, the assumptions that underlie the findings in the 2009 rule in a manner that would suggest that the mitigation or monitoring should change.

Adaptive Management

In general, adaptive management allows NMFS to consider new information and determine (with input from the Navy regarding practicability) if modifications to monitoring efforts are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which requires an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2011, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2011, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions

regarding Navy mitigation and monitoring. None of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures.

Integrated Comprehensive Monitoring Report

Further, the Navy convened a monitoring meeting in June, 2011 to solicit input from NMFS, marine mammal and acoustic scientists, and interested members of the public regarding the comprehensive development and improvement of the more specific monitoring that should occur across the Navy's training areas. The Navy is currently working on a Navy-wide Strategic Plan for monitoring based on applicable input from the 2011 monitoring workshop and may propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and training areas. If substantive monitoring modifications are proposed for any areas, NMFS will subsequently publish proposed LOAs, with the modifications, in the Federal Register and solicit public input. After addressing public comments and making changes as appropriate, NMFS would, as appropriate, issue new LOAs for the different training areas that reflect the updated ICMP and associated new Strategic Plan for Navy monitoring.

Authorization

The Navy complied with the mitigation and monitoring requirements of the 2011 LOA. Although the Navy exceeded the average annual authorization for two sonar systems, they remain well within the 5-year rule for all source amounts. Similarly, although the Navy potentially exceeded the average annual take authorization for eight species, they still remain well within the 5-year rule amounts. NMFS has determined that the marine mammal take

resulting from the 2011 military readiness training and research activities falls within the 5-year rule levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2012 and 2013 for the Navy's SOCAL Range Complex activities is consistent with our previous findings made for the total taking allowed under the SOCAL Range Complex regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010-2011 monitoring period will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a 2-year LOA for Navy training exercises conducted in the SOCAL Range Complex from February 8, 2012, through January 14, 2014.

Dated: February 1, 2012.

Helen M. Golde,
Deputy Director, Office of Protected Resources,
National Marine Fisheries Service.

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